IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 225 OF 2004

Arun Arora ...Applicant

Versus

Union of India & Anr. ... Respondents

Mr. U.S. Samudrala for the Applicant

Mr. Anil Singh for the Respondents.

CORAM: **DALVEER BHANDARI, C.J.**
DATE: JULY 8, 2005.

P.C.

1. Clause 70 of the Military Engineers Services General Conditions of Contract reads as under:-

> "All disputes between the parties to the contract (other tan those for which the decision of the CWE or any other person is by the contract expressed to be final and binding) shall after written notice by either party to the contract to the other of them, be referred to the sole arbitration of and Engineer Officer to be appointed by the authority mentioned in the tender documents.
>
> Unless both the parties agree in writing, such reference shall not take place until after the completion or alleged completion of the works or termination or determination of the contract under condition Nos. 55, 56 and 57 thereof.

Provided that in the event of abandonment of the work or cancellation of the contract under condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the government to get the works completed by or through any other contractor or contractors or agency or agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the government's right of recovery from the contractor as provided in condition 67 hereof.

If the arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new arbitrator to act in his place.

The arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleading in defence.

The arbitrator may proceed with the arbitration, *ex parte*, if either party in spite of a notice from the arbitrator fails to take part in the proceedings.

The arbitrator may, from time to time with the consent of the parties, enlarge the time but not exceeding one year from the date of his entering into reference, for making and publishing the award.

The arbitrator shall give his award within a period of 6 months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with the sums awarded, specially on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the arbitrator in his sole discretion.

> The award of the arbitrator shall be final and binding on both the parties to the contract."

2. Pursuant to the consent of the parties, the disputes have already been referred to the Arbitrator, Mr. Satish Chander. It would be open to the respondents to submit that certain disputes cannot be adjudicated by the Arbtirator according to the clause of arbitration, and that they shall also be determined.

3. No further directions are necessary. This application is accordingly disposed of.

CHIEF JUSTICE